

Entered

Site:	<i>Lee's home</i>
Break:	<i>10.9 v. 2</i>
Other:	<i>Conf.</i>

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

UNITED STATES OF AMERICA
Plaintiff

v.

No. C90-0695-L(J)

BEN HARDY, et al.
Defendants

COMMONWEALTH OF KENTUCKY, etc.,
Plaintiff

v.

No. C90-0792-L(J)

BEN HARDY, et al.
Defendants

MEMORANDUM

Before the court are cross motions for summary judgment between Dow Corning Corporation and Waste Management of Kentucky, Inc. (WMKy) concerning an alleged contract for indemnification for damages arising from WMKy's hauling and disposal of Dow Corning's waste at the Lee's Lane cleanup site. For the reasons below, both motions will be denied. Also before the court is a motion by the United States to enter the original consent decree with the twenty-three settling defendants and a consent decree between the United States and Ford Motor Company and Dow Corning Corporation. The court has reviewed the consent decree and the motion will be granted.



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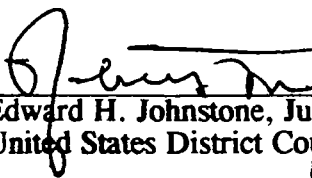
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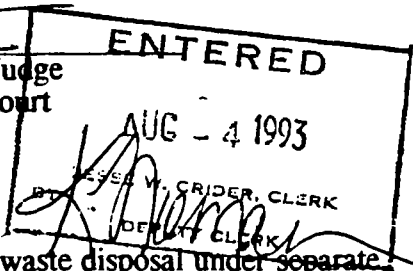
A daunting volume of printed material has been devoted to the issue of express contractual indemnity by the parties. The court will not attempt to match their prolixity. Although this would seem to be a relatively straightforward issue of contract formation and interpretation, the analysis is obscured. Because there are disputed facts present, summary judgment is inappropriate for either party.

The parties agree that WMKy hauled waste from Dow Corning's Elizabethtown plant to the Lee's Lane landfill site. The waste was of two kinds: drummed waste and waste contained in an "Anchorpac" waste compacting device leased to Dow Corning by WMKy. However neither party can produce a written instrument which purports to be a complete contract concerning either of the disposal agreements*. Dow Corning has provided a patchwork of letters of negotiation, severed indemnity agreements, purchasing orders and testimony concerning missing documents to supply the terms of the agreements. WMKy disputes Dow Corning's collective reading of this evidence. Without attempting to recount the specific details of the dispute, the court finds that ambiguities exist regarding the terms of the agreements, including the effective dates of the indemnity provisions. Dow Corning has not presented sufficient evidence to justify an award of summary judgment on the issue of complete indemnity as a matter of law.

There is sufficient disputed evidence to require a trier of fact to decide the disputed matters regarding the contracts. Therefore, WMKy's motion for summary judgment will also be denied. It is unnecessary to decide at this point whether Dow Corning's liability is entirely derivative of its agreements with WMKy.

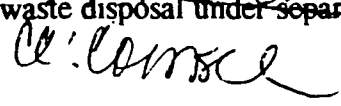
An appropriate order has been entered this 27th day of July, 1993.


Edward H. Johnstone, Judge
United States District Court



8/3/93

* The parties also engaged in at least two "trial periods" of waste disposal under separate agreement. This agreement is also incompletely documented.



UNITED STATES DISTRICT COURT
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COMMONWEALTH OF KENTUCKY, etc.,
Plaintiff

v.

No. C90-0792-L(J)

BEN HARDY, et al.
Defendants

ORDER

For the reasons set forth in the memorandum filed this date,

IT IS ORDERED:

1. That the renewed motion of the United States to enter the Consent Decree with the twenty-three original settling defendants is GRANTED.
2. That the motion of the United States to enter the Consent Decree with Ford Motor Company and Dow Corning Corporation is GRANTED.
3. That the motion of the United States to vacate the September 9, 1992 Order and Memorandum Opinion is GRANTED in part. Those portions of the Order and Memorandum Opinion which relate to the court's rejection of the Consent Decree on the grounds of substantive fairness are VACATED.

4. The motion for summary judgment by Dow Corning Corporation is DENIED.

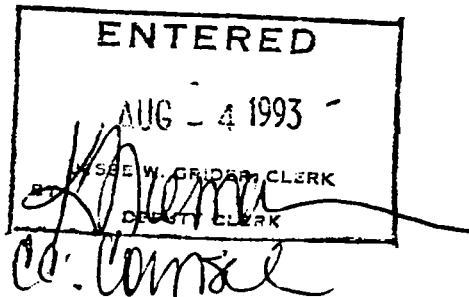
5. The motion of Waste Management of Kentucky, Inc. for summary judgment is DENIED.

IT IS SO ORDERED this 27th day of July, 1993.



Edward H. Johnstone, Judge
United States District Court

Copies to counsel



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

10/18/90
FILED

AUG 04 1992

DEP. CLERK

CIVIL ACTION NO.

UNITED STATES OF AMERICA,

Plaintiff,

v.

BEN HARDY, et al.,

Defendants.

C- '90-0695

L-A-T

CONSENT DECREE

I.

BACKGROUND

WHEREAS, the United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA") filed on _____, 1990, a complaint in this matter pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) (hereinafter "CERCLA");

WHEREAS, in response to a release or a substantial threat of a release of a hazardous substance at or from the Lee's Lane Landfill Site ("the Site") in Jefferson County, Kentucky, the EPA conducted a response action pursuant to Section 104 of CERCLA;

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WHEREAS, EPA has incurred costs in conducting response actions at the Site and will continue to incur response costs with respect to the Site;

WHEREAS, the United States and certain Defendants named in the Complaint desire to settle this matter;

WHEREAS, the Settling Defendants deny liability for those matters alleged in the complaint, and the entry of this Consent Decree shall not be construed as an admission of liability by Settling Defendants;

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that implementation of this Consent Decree will avoid prolonged and complicated litigation among the Parties, that entry of this Consent Decree is in the public interest, and that the past response costs incurred by the Plaintiff in connection with the Site are consistent with the National Contingency Plan;

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II.

JURISDICTION

This Court has jurisdiction over the subject matter of these actions pursuant to 28 U.S.C. §§ 1331 and 1345, 42 U.S.C. §§ 9607 and 9613(b). This Court also has personal jurisdiction over the Settling Defendants who, for purposes of this Consent Decree, waive all objections and defenses that they may have to

jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge this Court's jurisdiction to enter and enforce this Consent Decree.

III.

PARTIES BOUND

The Consent Decree applies to and is binding upon the undersigned Parties, their employees and officers and their successors, assigns, contractors, and agents. Any change in ownership or corporate status of a Settling Defendant shall in no way alter such Settling Defendant's responsibility under this Decree.

IV.

DEFINITIONS

Unless noted to the contrary, the terms of this Consent Decree shall have the same meaning as terms defined in CERCLA. Whenever the following terms are used in this Consent Decree and the Appendices attached hereto, the following definitions specified in this Paragraph shall apply:

A. "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

B. "EPA" means the United States Environmental Protection Agency.

C. "Future Response Costs" means any Response Costs which may be incurred by the Plaintiff in relation to the Site following lodging of this Consent Decree.

D. "MSD" means the Louisville and Jefferson County Metropolitan Sewer District.

E. "National Contingency Plan" or "NCP" means the National Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including any amendments thereto.

F. "Parties" means the United States of America and the Settling Defendants.

G. "Past Response Costs" means all Response Costs incurred by the Plaintiff in connection with the Site prior to lodging of this Consent Decree.

H. "Plaintiff" means the United States of America.

I. "Response Costs" means any costs incurred by Plaintiff pursuant to Section 104 of CERCLA, 42 U.S.C. §9604.

J. "Settling Defendants" means those Defendants who sign this Consent Decree, and their successors and assigns.

K. "Site" means the "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), encompassing the property commonly known as Lee's Lane Landfill, where hazardous substances have been disposed of and otherwise have come to be located. The Site is located approximately 4.4 miles southwest of Louisville, Kentucky, in Jefferson County, and is adjacent to the Ohio River.

L. "United States" means the United States of America and its departments and agencies, including the United States Environmental Protection Agency.

V.

REIMBURSEMENT OF RESPONSE COSTS

1. Settling Defendants agree to reimburse the Plaintiff as provided herein for Past Response Costs and for the first five hundred thousand dollars (\$500,000.00) incurred after the lodging of this Consent Decree in the performance of monitoring, operation, and maintenance work related to the Site. Within thirty (30) days of the entry of this Consent Decree, Settling Defendants shall pay to EPA the dollar amounts specified below in the form of a certified check or checks made payable to "EPA Hazardous Substance Superfund," and marked as relating to the Site, the civil action number of this matter, and the Department of Justice File No. 90-11-3-215, in reimbursement of Response Costs incurred by the United States:

<u>Settling Defendant</u>	<u>Amount Due</u>
American Synthetic Rubber Corp. ✓	\$128,400
ARCO ✓	\$83,460
Ashland Chemical Co. ✓	\$64,200
B.F. Goodrich Co. ✓	\$321,000
Boone Box Co. ✓	\$32,100
Courier Journal ✓	\$64,200
George W. Whitesides Co. ✓	\$32,100

Hoechst Celanese Corp. ✓	\$321,000
Industrial Disposal Co. ✓	\$64,200
Kewanee Industries, Inc. ✓	\$128,400
Kurfees Coatings, Inc. ✓	\$32,100
Liberty Plastics & Metals Co. ✓	\$10,000
Liquid Transporters, Inc. ✓	\$80,250
Mobil Oil Corp. ✓	\$64,200
Owens-Illinois, Inc. ✓	\$166,920
Reynolds Metals Co.	\$32,100
Rohm and Haas Co. ✓	\$321,000
Southern Gravure Service, Inc.	\$64,200
Standard Gravure Corp.	\$64,200
The Olympic Homecare Products Co. ✓	\$128,400
United Catalysts, Inc.	\$64,200
Valley Sanitation, Inc.	\$64,200
Waste Management of Kentucky, Inc.	\$128,400

The certified check(s) shall be forwarded to EPA-Region IV, Attention: Superfund Accounting, P.O. Box 100142, Atlanta, Georgia, 30384. Copies of the check(s) and any transmittal letter(s) shall be sent to the United States.

VI.

STIPULATED PENALTIES AND INTEREST

2. If any Settling Defendant fails to comply with any requirement applicable to it in this Consent Decree, such Settling Defendant shall pay to EPA stipulated penalties in the following amounts for each day of each and every violation of said requirements:

<u>Period of Delay</u>	<u>Penalty Per Violation Per Day</u>
1st through 14th day	\$ 3,000
15th through 30th day	\$ 6,000
Beyond 30 days	\$10,000

3. Except as otherwise provided in this Paragraph 3, stipulated penalties shall begin to accrue on the day that noncompliance occurs or on the day following the date that payment is due pursuant to Paragraph 1, and shall continue to accrue through the final day of correction of the noncompliance or the day that payment is received by EPA. With respect to any violation of Paragraph 14, stipulated penalties shall begin to accrue upon notification by the United States or EPA of noncompliance. Separate penalties shall accrue for each separate violation of this Consent Decree.

4.a. All penalties due to EPA under this Section shall be payable within thirty (30) days of receipt by the Settling Defendant of notification of noncompliance. Interest shall begin to accrue on the unpaid penalty balance at the end of the thirty-day period, at the rate specified in Subparagraph 4(c) below. A handling charge shall be assessed at the end of each thirty-day late period, and a six (6) percent per annum penalty charge shall be assessed if the penalty is not paid within ninety (90) days after it is due.

b. With respect to any outstanding payment obligation under Paragraph 1, Section V, except as otherwise specified therein, interest shall accrue on the outstanding obligation beginning on the day after payment is due at the rate specified in Subparagraph 4(c) below. The interest due under this Subparagraph shall be in addition to any interest or charges assessed under Subparagraph 4(a).

c. All interest payable pursuant to this Consent Decree shall accrue at the rate equal to the yield fixed in the 52-week U.S. Treasury MK Bills purchased by the U.S. Treasury Department for investment of Superfund monies in September for the applicable fiscal year. For fiscal year 1989 (October 1, 1988, to September 30, 1989), the interest rate shall be 8.39%. Interest shall be compounded annually on October 1.

5. Stipulated penalties due to EPA shall be paid by certified check made payable to "EPA Hazardous Substance Superfund" and shall be mailed to EPA-Region IV, Attention: Superfund Accounting, P.O. Box 100142, Atlanta, Georgia, 30384.

6. The stipulated penalties set forth above shall be in addition to any other remedies or sanctions which may be available to the Plaintiff by reason of any Settling Defendant's failure to comply with the requirements of this Consent Decree.

VII.

COVENANTS NOT TO SUE BY PLAINTIFF

7. Past Response Costs. Subject to the reservations of rights in Paragraph 9 of this Section, the Plaintiff covenants not to sue Settling Defendants in any civil or administrative proceeding for reimbursement of Plaintiff's Past Response Costs. This covenant not to sue shall take effect upon the receipt by Plaintiff of the payments required by Paragraph 1, Section V. This covenant not to sue is conditioned upon complete and satisfactory performance by Settling Defendants of their payment obligations under Paragraph 1, Section V, of this Consent Decree. This covenant not to sue extends only to the Settling Defendants and does not extend to any other person.

8. Monitoring Activities and Operation and Maintenance.

a. Subject to the reservations of rights in Paragraph 9 of this Section, Plaintiff covenants not to sue Settling

Defendants in any civil or administrative proceeding for reimbursement of the first five hundred thousand dollars (\$500,000.00) incurred by Plaintiff and/or the Commonwealth of Kentucky after the lodging of this Consent Decree in the performance of monitoring, operation, and maintenance work related to the Site. Specifically, this covenant not to sue extends to the first five hundred thousand dollars (\$500,000.00) which may be incurred solely by the Plaintiff, solely by the Commonwealth of Kentucky, or partly by the Plaintiff and partly by the Commonwealth of Kentucky. In any action by Plaintiff against Settling Defendants for Future Costs incurred in the performance of monitoring, operation, and maintenance work, Settling Defendants reserve the right to dispute that the first five hundred thousand dollars or a portion thereof were actually incurred by the Plaintiff and/or the Commonwealth of Kentucky, but Settling Defendants agree not to dispute the incurrence of the first five hundred thousand dollars by the Plaintiff and/or the Commonwealth of Kentucky on the grounds that such costs were inconsistent with the National Contingency Plan. If Plaintiff enters into an enforceable agreement with MSD for the performance of monitoring, operation, and maintenance work related to the Site, this Paragraph 8(a) and the covenant not to sue contained herein shall be of no force and effect, and the covenant not to sue set forth in Paragraph 8(b) shall govern.

b. Upon entry by Plaintiff into an enforceable agreement with MSD for the performance of monitoring, operation,

and maintenance work related to the Site, Plaintiff covenants not to sue Settling Defendants for the performance of monitoring, operation, and maintenance work which is performed by MSD pursuant to said agreement and further covenants not to sue Settling Defendants for oversight costs which may be incurred by EPA in overseeing the work required pursuant to said agreement.

c. The covenants not to sue set forth in this Paragraph 8 shall take effect upon the receipt by Plaintiff of the payments required by Paragraph 1, Section V. These covenants not to sue are conditioned upon complete and satisfactory performance by Settling Defendants of their payment obligations under Paragraph 1, Section V, of this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

9. Reservations of rights. The Plaintiff reserves, and this Consent Decree is without prejudice to, all rights against each Settling Defendant with respect to all matters other than those expressly specified in the covenants not to sue set forth in Paragraphs 7 and 8 of this Section, including but not limited to:

- (1) claims based on a failure by such Settling Defendant to meet a requirement of this Consent Decree;
- (2) claims for reimbursement of Future Response Costs, except as expressly provided in Paragraph 8 of this Section;

- (3) claims for injunctive relief for the performance of response actions except as expressly provided by Paragraph 8 of this Section;
- (4) claims for damages for injury to, destruction of, or loss of natural resources; and
- (5) any criminal liability.

10. Any claim or defense which any Settling Defendant may have against any person or entity, not a party to this Consent Decree, including, but not limited to, claims for indemnity or contribution, is expressly reserved. Except as expressly provided in Paragraph 8(a), nothing in this Consent Decree shall in any way limit the rights and defenses which may be available to any Settling Defendant in any action other than an action to enforce the provisions of this Consent Decree.

11. Notwithstanding any other provision of this Consent Decree, the Plaintiff retains all authority and reserves all rights to take any and all response actions authorized by law.

VIII.

CONTRIBUTION PROTECTION

12. Subject to the reservations of rights in Section VII, Paragraph 9, the Plaintiff agrees that by entering into and carrying out the terms of this Consent Decree, the Settling Defendants will have resolved their liability to the Plaintiff for those matters set forth in the covenants not to sue in Section VII, Paragraphs 7 and 8, pursuant to Section 113(f) of

CERCLA, and shall not be liable for claims for contribution for those matters.

IX.

COVENANTS BY SETTLING DEFENDANTS

13. Settling Defendants hereby covenant not to sue the Plaintiff or its representatives for any claims related to or arising from this Consent Decree, including any direct or indirect claim for reimbursement from the Hazardous Substances Superfund established pursuant to Section 221 of CERCLA, 42 U.S.C. § 9631.

X.

COOPERATION AND RETENTION OF RECORDS

14. Settling Defendants agree to cooperate and assist the Plaintiff in the prosecution of this or any other actions relating to the Site against all persons or entities who are not parties to this Consent Decree. Settling Defendants' obligations of cooperation and assistance include, but are not limited to, naming and producing fact witnesses with knowledge relating to the Site for interviews, depositions, and trial; waiving the subpoena requirements for the depositions and trial testimony of such witnesses; producing documents requested; and promptly responding to requests for information regarding those matters specified in Section 104(e)(2) of CERCLA. The benefit of said agreement by Settling Defendants shall extend only to Plaintiff and not to any other person. Nothing in this Paragraph shall be construed to limit or otherwise affect the exercise of

Plaintiff's prosecutorial discretion or any of Plaintiff's authorities under Section 104(e) of CERCLA. Further, nothing in this Paragraph shall be construed to alter the scope of the covenants not to sue and reservations of rights set forth in Paragraphs 7 through 9, Section VII of this Consent Decree.

15. Until ten years after the entry of this Consent Decree, each Settling Defendant shall preserve and retain all records and documents now in its possession or control that relate in any manner to the Site. After this document retention period, Settling Defendants shall notify the United States at least ninety (90) calendar days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Defendants shall relinquish custody of the records or documents to the United States.

16. Nothing in this Section X shall be construed as a waiver of the attorney-client privilege or work product doctrine by any of the Parties to this Consent Decree.

XI.

NOTICES AND SUBMISSIONS

17. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals and the addresses specified below, unless those individuals or their successors give notice of a change to the other parties in writing. Written notice as specified herein

shall constitute complete satisfaction of any notice requirement of the Consent Decree with respect to the Parties hereto.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
Department of Justice
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Re: DOJ # 90-11-3-215

and

Director, Waste Management Division
United States Environmental Protection Agency,
Region IV
345 Courtland Street
Atlanta, Ga. 30365

As to the Settling Defendants:

American Synthetic Rubber Corp.:

James L. McGraw
American Synthetic Rubber Corp.
P.O. Box 32960
Louisville, Ky. 40232

Lloyd R. Cress, Esq.
Greenbaum Doll & McDonald
P. O. Box 1808
Lexington, Ky. 40593

ARCO:

John A. Miller
Manager, Superfund
ARCO
515 South Flower St.
Los Angeles, CA 90071

Joan G. Di Nal
Senior Corporate Counsel
ARCO
515 South Flower St.
Los Angeles, CA 90071

Ashland Chemical Co.:

Kristina M. Woods
Environmental Attorney
Ashland Chemical Company
5200 Paul G. Blazer Memorial Parkway
Dublin, Ohio 43017

B.F. Goodrich Co.:

R. L. Martin, Manager
Health, Safety & Environmental
The BFGoodrich Company
P.O. Box 32950
Bells Lane
Louisville, Ky. 40232-2950

Thomas F. Harrison, Esq.
Day, Berry & Howard
CityPlace
Hartford, Conn. 06103-3499

Boone Box Co.:

Mr. Andre B. Lacy, President
Lacy Diversified Industries
251 N. Illinois St., Ste. 1800
Indianapolis, Ind. 46204

Joan M. Heinz, Esq.
Barnes & Thornburg
1313 Merchants Bank Bldg.
11 S. Meridian St.
Indianapolis, Ind. 46204

Courier Journal:

George L. Seay, Jr., Attorney
Wyatt, Tarrant & Combs
P.O. Box 495
Frankfort, Ky. 40602

George W. Whitesides Co.:

John McCafferty, President
George W. Whitesides Co.
3048 Muhammad Ali Blvd.
Louisville, Ky. 40212

Hoechst Celanese Corp.:

Daniel Flynn, Associate General Counsel
Hoechst Celanese Corporation
Route 202-206
P.O. Box 2500
Somerville, N.J. 08876-1258

Industrial Disposal Co.:

Marcus P. McGraw, Esq.
Greenebaum, Doll & McDonald
1400 Vine Center Tower
P.O. Box 1808
Lexington, Ky. 40593

Kewanee Industries, Inc.:

Frank W. Berryman
Manager, Environmental & Health Protection
6001 Bollinger Canyon Rd.
San Ramon, Cal. 94563

Kurfees Coatings, Inc.:

D. B. Kurfees, President
Kurfees Coating, Inc.
201 E. Market St.
Louisville, Ky. 40202

Liberty Plastics & Metals Co.:

Louis H. Clark c/o Liberty Plastics & Metals Co.
1423 W. Ormsby Ave.
Louisville, Ky. 40210

Liquid Transporters, Inc.:
Lee J. Perme, Secretary
Liquid Transporters, Inc.
1292 Fern Valley Rd.
P. O. Box 36247
Louisville, Ky. 40233

Mobil Oil Corp.:
Robert J. Brenner, Superfund Response Manager
P.O. Box 1031
Princeton, N. J. 08543-1031

Owens-Illinois, Inc.:
Michael E. McConnell, Assistant Secretary
Owens-Illinois, Inc.
One Seagate
Toledo, Ohio 43666

Reynolds Metals Co.:
Reynolds Metals Company
Corporate Secretary's Office
6601 Broad Street Rd.
Richmond, Va. 23230

James E. McKinnon, Esq.
Law Department, E-2-6
P.O. Box 27003
Richmond, Va. 23261

Rohm and Haas Co.:
Ellen S. Friedell
Senior Counsel
Independence Mall West
Philadelphia, Pa. 19105

Patrick J. Moran
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Louisville, Ky. 40232

Southern Gravure Service, Inc.:
Reynolds Metals Company
Corporate Secretary's Office
6601 Broad Street Rd.
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James E. McKinnon, Esq.
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Richmond, Va. 23261

Standard Gravure Corp.:
Mr. Donald M. McCall
Executive Vice President
643 South Sixth St.
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David S. Waskey, Esq.
Alagia, Day, Marshall
Mintmire & Chauvin
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444 South Fifth St.
Box 1179
Louisville, Ky. 40201

The Olympic Homecare Products Co.:
Edward A. Cutter
Vice President and General Counsel
The Clorox Company
1221 Broadway
Oakland, California 94612

United Catalysts, Inc.:
George L. Seay, Jr., Attorney
Wyatt, Tarrant & Combs
P.O. Box 495
Frankfort, Ky. 40602

Valley Sanitation, Inc.:
Mr. Leroy Hall
Valley Sanitation, Inc.
P. O. Box 72157
Louisville, Ky. 40272

Waste Management of Kentucky, Inc.:	
Donald R. Price, President	Ann Straw, Environmental Counsel
Waste Management of	Waste Management of North America,
Kentucky, Inc.	Inc.
1902 Outer Loop	2 Westbrook Corporate Center
Louisville, Ky. 40219	Suite 1000
	Westchester, Ill. 60153

XII.

EFFECTIVE AND TERMINATION DATES

18. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

19. This Consent Decree shall terminate upon expiration of the ten-year document retention period specified in Section X. Termination of this Consent Decree shall not affect the covenants not to sue or the reservations of rights set forth in Section VII or the continuing obligations of Settling Defendants set forth in Section X.

XIII.

RETENTION OF JURISDICTION

20. This Court will retain jurisdiction for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or

appropriate for the modification of this Consent Decree or to effectuate or enforce compliance with its terms.

XIV.

MODIFICATION

21. No modification shall be made to this Consent Decree without written notification to and written approval of the Parties and the Court. The notification required by this Section shall set forth the nature of and reasons for the requested modification. No oral modification of this Consent Decree shall be effective. Nothing in this paragraph shall be deemed to alter the Court's power to supervise or modify this Consent Decree.

XV.

LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

22. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7. The Plaintiff reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

XVI.

SIGNATORIES

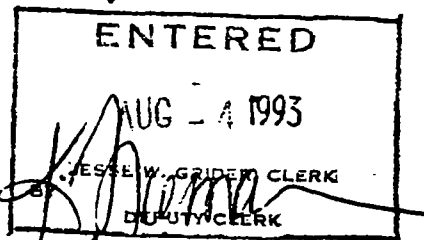
23. Each undersigned representative of a Party to this Consent Decree certifies that he or she is fully authorized to

enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

25. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure, including service of a summons, and any applicable local rules of this Court.

SO ORDERED THIS 4th DAY OF August, 1983

[Signature]
United States District Judge



cc: Counsel

THE UNDERSIGNED PARTIES enter into this Consent Decree relating to the Lee's Lane Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: 10-17-90

Richard B. Stewart

Richard B. Stewart
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Date: October 17, 1989

Ann C. Thode

Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Date: OCT 11 1990

Lee A. Drabinski, Acting

Regional Administrator, Region IV
U.S. Environmental Protection
Agency

OF COUNSEL:

ROBERT CAPLAN, ESQ.
U.S. Environmental Protection
Agency, Region IV

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the Lee's Lane Superfund Site.

FOR AMERICAN SYNTHETIC RUBBER CORP.:

Date: MAY 1, 1989

James L. McHaw

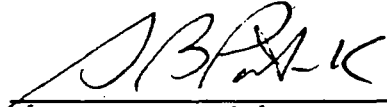
Agent Authorized to Accept Service on Behalf of Amercian Synthetic Rubber Corp.:

Name:	<u>Lloyd R. Cress</u>
Title:	<u>Attorney at Law</u>
Address:	<u>Greenebaum Doll & McDonald</u>
	<u>P.O. Box 1808</u>
	<u>Lexington, Kentucky 40593</u>

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the Lee's Lane Superfund Site.

FOR ASHLAND CHEMICAL CO.:

Date: May 4, 1989



Scotty B. Patrick KMW
Administrative Vice President-Technical

Agent Authorized to Accept Service on Behalf of Ashland Chemical Co.:

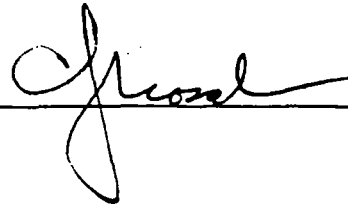
Name:	<u>Kristina M. Woods</u>
Title:	<u>Environmental Attorney</u>
Address:	<u>Ashland Chemical Company</u>
	<u>5200 Paul G. Blazer Memorial Parkway</u>
	<u>Dublin, Ohio 43017</u>

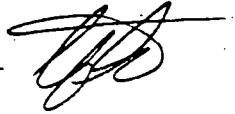
THE UNDERSIGNED PARTY enters into this Consent Decree relating to the Lee's Lane Superfund Site.

FOR B. F. GOODRICH CO.:

Date:

5/5/89





Agent Authorized to Accept Service on Behalf of B. F. Goodrich Co.:

Name: Thomas F. Harrison, Esq.
Title: Partner
Address: Day, Berry & Howard
CityPlace
Hartford, Connecticut 06103-3499

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the Lee's Lane Superfund Site.

FOR BOONE BOX CO.:

Date: 5/1/89

Andre B. Lacy

Agent Authorized to Accept Service on Behalf of Boone Box Co.:

Name: Andre B. Lacy
Title: Lacy Diversified Industries, Ltd.
Address: 851 N. Illinois St. - Suite 1800
Indianapolis, IN. 46204

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the Lee's Lane Superfund Site.

FOR THE COURIER JOURNAL:

Date: May 15, 1989

Ralph Henry
VP/OPERATIONS

Agent Authorized to Accept Service on Behalf of the Courier Journal:

Name:	<u>George L. Seay, Jr.</u>
Title:	<u>Attorney</u>
Address:	<u>Wyatt, Tarrant & Combs</u>
	<u>P.O. Box 495</u>
	<u>Frankfort, Kentucky 40602</u>

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the Lee's Lane Superfund Site.

FOR GEORGE W. WHITESIDES CO.

John T. McCafferty
President, George W. Whitesides Co.

Date:

9/17/90

John T. McCafferty


Agent Authorized to Accept Service on Behalf of George W. Whitesides Co.:

Name: John T. McCafferty
Title: President
Address: 3048 Muhammad Ali Blvd.
Louisville, Kentucky 40212

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the Lee's Lane Superfund Site.

FOR HOECHST CELANESE CORP.:

Date: May 5, 1989



Harry A. Benz
Executive Vice President and
Chief Financial Officer

Agent Authorized to Accept Service on Behalf of Hoechst Celanese Corp.:

Name: Daniel S. Flynn
Title: Associate General Counsel
Address: Hoechst Celanese Corporation
Route 202-206, P.O. Box 2500
Somerville, New Jersey 08876-1258

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the Lee's Lane Superfund Site.

FOR INDUSTRIAL DISPOSAL CO.:

Date:

May 5, 1989

David Hyman V.P.

Agent Authorized to Accept Service on Behalf of Industrial Disposal Co.:

Name:	MARCUS P. McGRAW
Title:	Attorney
Address:	Greenebaum Doll & McDonald
	1400 Vine Center Tower
	P.O. Box 1808
	Lexington, KY 40593-1808

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the Lee's Lane Superfund Site.

FOR KEWANEE INDUSTRIES, INC.:

Date:

May 8, 1989

Frank W. Berryman

Agent Authorized to Accept Service on Behalf of Kewanee Industries, Inc.:

Name:	FRANK W. BERRYMAN
Title:	MANAGER, ENVIRONMENTAL & HEALTH PROTECTION
Address:	6001 BOLLINGER CANYON ROAD
	SAN RAMON, CA 94563

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the Lee's Lane Superfund Site.

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the Lee's Lane Superfund Site.

FOR KURFEES COATINGS, INC.:

Date:

Sept 17, 1990

W. J. Carroll

Agent Authorized to Accept Service on Behalf of Kurfees Coatings, Inc.:

Name: Wayne J. Carroll
Title: Attorney for Kurfees Coatings, Inc.
Address: MacKenzie & Peden, P.S.C.
Suite 650, The Starks Building
Louisville, Kentucky 40202

but

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the Lee's Lane Superfund Site.

FOR LIBERTY PLASTICS & METALS CO.:

Date: April 27, 1989

Louis H. Clark

Agent Authorized to Accept Service on Behalf of Liberty
Plastics & Metals Co.:

Name: Louis H. Clark c/o Liberty Plastics & Metals Co.
Title: _____
Address: 1423 W. Ormsby Avenue
Louisville, KY 40210

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the Lee's Lane Superfund Site.

FOR LIQUID TRANSPORTERS, INC.:

Date: May 8, 1989

Michael J. Braggins President

Agent Authorized to Accept Service on Behalf of Liquid Transporters, Inc.:

Name:	Lee J. Perme
Title:	Secretary
Address:	1292 Fern Valley Road
	P. O. Box 36247
	Louisville, KY 40233

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the Lee's Lane Superfund Site.

FOR MOBIL OIL CORP.:

Date: May 9, 1989

Robert J. Grenner

Agent Authorized to Accept Service on Behalf of Mobil Oil Co.:

Name:	<u>F. A. Rowen, Jr.</u>
Title:	<u>Office of General Counsel</u>
Address:	<u>Mobil Oil Corporation</u>
	<u>150 East 42nd St. Rm. 35E005</u>
	<u>New York, New York</u>

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the Lee's Lane Superfund Site.

FOR REYNOLDS METAL CO.:

Date: 5-4-89

C. S. Frazier
V.P. & General Mgr.

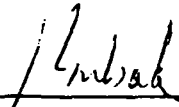
Agent Authorized to Accept Service on Behalf of Reynolds Metal Co.:

Name: James E. McKinnon, Esq.
Title: Attorney
Address: 6601 Broad Street Road
Richmond, Virginia 23230

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the Lee's Lane Superfund Site.

FOR ROHM AND HAAS CO.:

Date: May 2, 1989


Group Vice President and
General Counsel

Agent Authorized to Accept Service on Behalf of Rohm & Haas Co.:

Name:	<u>Ellen S. Friedell</u>
Title:	<u>Senior Counsel</u>
Address:	<u>Rohm and Haas Company</u>
	<u>Independence Mall West</u>
	<u>Philadelphia, PA 19105</u>

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the Lee's Lane Superfund Site.

FOR SOUTHERN GRAVURE SERVICE, INC.:

Date:

5/5/89

T. L. Hammond

T. L. HAMMOND, PRESIDENT

Agent Authorized to Accept Service on Behalf of Southern Gravure Service, Inc.:

Name: James E. McKinnon, Esq.
Title: Attorney
Address: 6601 Broad Street Road
Richmond, Virginia 23230

THE UNDERSIGNED PARTY enters into this Consent Decree relating
to the Lee's Lane Superfund Site.

FOR STANDARD GRAVURE CORP.:

Date:

May 16, 1989

Donald M. McCall

Donald M. McCall
Executive Vice President

Agent Authorized to Accept Service on Behalf of Standard
Gravure Corp.:

Name:	<u>David S. Waskey</u>
Title:	<u>ALAGIA, DAY, MARSHALL, MINTMIRE & CHAUVIN</u>
Address:	<u>444 South Fifth Street</u>
	<u>Louisville, Kentucky 40202</u>
	<u></u>

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the Lee's Lane Superfund Site.

FOR THE OLYMPIC HOMECARE PRODUCTS CO.

Date: _____

E. A. Cutter

Agent Authorized to Accept Service on Behalf of The Olympic
Homecare Products Co.:

Name:	<u>Edward A. Cutter</u>
Title:	<u>Vice President and General Counsel</u>
Address:	<u>The Clorox Company</u>
	<u>1221 Broadway</u>
	<u>Oakland, CA 94612</u>

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the Lee's Lane Superfund Site.

FOR United Catalyst COMPANY, INC.

Date: 6/77/89 SCCamenisch

Agent Authorized to Accept Service on Behalf of _____:

Name: SCCamenisch
Title: Director, Environmental Health & Safety Services
Address: PO Box 32370
Louisville, Ky 40232

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the Lee's Lane Superfund Site.

FOR VALLEY SANITATION, INC.:

Date:

May 4, 1989

Leroy Hall
Leroy Hall

Agent Authorized to Accept Service on Behalf of Valley Sanitation, Inc.:

Name: Mark R. Feather
Title: Counsel for Valley Sanitation, Inc.
Address: BROWN, TODD & HEYBURN
1600 Citizens Plaza
Louisville, Kentucky 40202-2873

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the Lee's Lane Superfund Site.

FOR WASTE MANAGEMENT OF KENTUCKY, INC.:

Date:

7-10-89

[Signature]

Agent Authorized to Accept Service on Behalf of Waste Management of Kentucky, Inc.:

Name: CT Corporation System

Title: _____

Address: Kentucky Home Life Building
Louisville, Kentucky 40202

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the Lee's Lane Superfund Site.

FOR ATLANTIC RICHFIELD CO. (ARCO):

Date:

June 30, 1989

William D. Lake

Agent Authorized to Accept Service on Behalf of Atlantic Richfield Co. (ARCO):

Name:	<u>Howard L. Edwards</u>
Title:	<u>Corporate Secretary</u>
Address:	<u>Atlantic Richfield Company</u>
	<u>515 South Flower Street</u>
	<u>Los Angeles, CA 90071</u>

THE UNDERSIGNED PARTY enters into this Consent Decree relating
to the Lee's Lane Superfund Site.

FOR OWENS-ILLINOIS, INC.

Date: 6/26/89

Michael E. McConnell

Michael E. McConnell
Assistant Secretary

Agent Authorized to Accept Service on Behalf of Owens-
Illinois, Inc.:

Name:	<u>Michael E. McConnell</u>
Title:	<u>Assistant Secretary</u>
Address:	<u>Owens-Illinois, Inc.</u>
	<u>One SeaGate</u>
	<u>Toledo, OH 43666</u>

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

FILED
JESSE W. GRIDER, CLERK

JUN 24 1993

U.S. DISTRICT COURT
WEST'N. DIST. KENTUCKY

CIVIL ACTION NO.
C-90-0695-L(J)

UNITED STATES OF AMERICA,

Plaintiff,

v.

BEN HARDY, et al.,

Defendants.

FILED
AUG 04 1992
JESSE W. GRIDER, CLERK
DEPUTY CLERK

CONSENT DECREE

I.

BACKGROUND

WHEREAS, the United States of America ("United States") on behalf of the Administrator of the United States Environmental Protection Agency ("EPA") filed on January 4, 1991, an Amended Complaint in this matter pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) (hereinafter "CERCLA");

WHEREAS, in response to a release or a substantial threat of a release of a hazardous substance at or from the Lee's Lane Landfill ("the Site") in Jefferson County, Kentucky, the EPA conducted a response action pursuant to Section 104 of CERCLA;

235 -

WHEREAS, EPA has incurred costs in conducting response actions at the Site and will continue to incur response costs with respect to the Site;

WHEREAS, the United States and certain Defendants named in the Amended Complaint desire to settle this matter;

WHEREAS, the Settling Defendants deny liability for those matters alleged in the Amended Complaint, and the entry of this Consent Decree shall not be construed as an admission of liability by Settling Defendants;

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that implementation of this Consent Decree will avoid prolonged and complicated litigation among the Parties, that entry of this Consent Decree is in the public interest, and that the past response costs incurred by the Plaintiff in connection with the Site are consistent with the National Contingency Plan;

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II.

JURISDICTION

This Court has jurisdiction over the subject matter of these actions pursuant to 28 U.S.C. §§ 1331 and 1345, 42 U.S.C. §§ 9607 and 9613(b). This Court also has personal jurisdiction over the Settling Defendants who, for purposes of this Consent Decree, waive all objections and defenses that they may have to

jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge this Court's jurisdiction to enter and enforce this Consent Decree.

III.

PARTIES BOUND

The Consent Decree applies to and is binding upon the United States and upon the Settling Defendants, their employees and officers and their successors, assigns, contractors, and agents. Any change in ownership or corporate status of a Settling Defendant shall in no way alter such Settling Defendant's responsibility under this Decree.

IV.

DEFINITIONS

Unless noted to the contrary, the terms of this Consent Decree shall have the same meaning as terms defined in CERCLA. Whenever the following terms are used in this Consent Decree and the Appendices attached hereto, the following definitions specified in this Paragraph shall apply:

A. "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

B. "EPA" means the United States Environmental Protection Agency.

C. "Future Response Costs" means any Response Costs which may be incurred by the Plaintiff in relation to the Site following lodging of this Consent Decree.

D. "MSD" means the Louisville and Jefferson County Metropolitan Sewer District.

E. "National Contingency Plan" or "NCP" means the National Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including any amendments thereto.

F. "Parties" means the United States of America and the Settling Defendants.

G. "Past Response Costs" means all Response Costs incurred by the Plaintiff in connection with the Site prior to lodging of this Consent Decree.

H. "Plaintiff" means the United States of America.

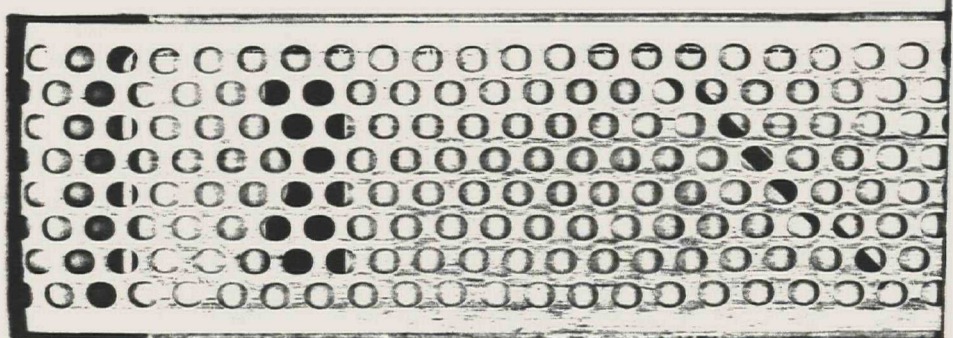
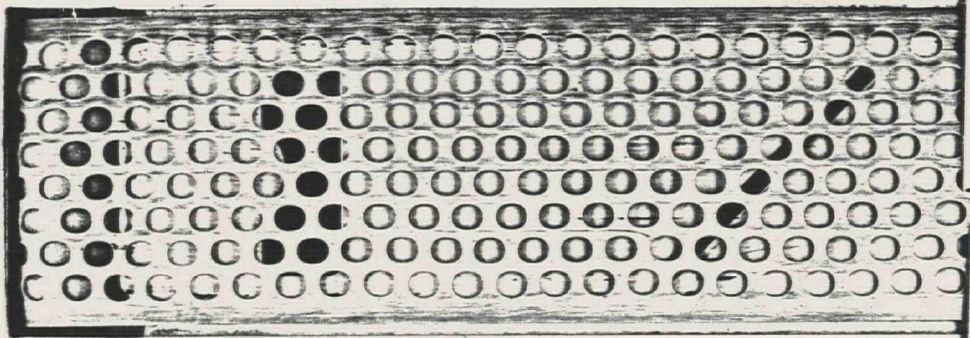
I. "Response Costs" means any costs incurred by Plaintiff pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

J. "Settling Defendants" means those Defendants who sign this Consent Decree, and their successors and assigns.

K. "Site" means the "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), encompassing the property commonly know as Lee's Lane Landfill, where hazardous substances have been disposed of and otherwise have come to be located. The Site is located approximately 4.4 miles southwest of Louisville, Kentucky, in Jefferson County, and is adjacent to the Ohio River.

L. "United States" means the United States of America and its departments and agencies, including the United States Environmental Protection Agency.

Site: Lee's Lane
 Break: 10.9
 Other: 2.2



321,000.00 +
 321,000.00 +
 2,459,230.00 +
 3,101,230.00 *

7

25 PRPS
 DUE 30 DAYS FROM
 ENTRY

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64,200.00 +

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32,100.00 +

321,000.00 +

64,200.00 +

128,400.00 +

32,100.00 +

10,000.00 +

80,250.00 +

64,200.00 +

166,920.00 +

32,100.00 +

321,000.00 +

64,200.00 +

64,200.00 +

128,400.00 +

64,200.00 +

64,200.00 +

128,400.00 +

2,459,230.00 *

V.

REIMBURSEMENT OF RESPONSE COSTS

1. Settling Defendants agree to reimburse the Plaintiff as provided herein for Past Response Costs. Within thirty (30) days of the entry of this Consent Decree, Settling Defendants shall pay to EPA the dollar amounts specified below in the form of a certified check or checks made payable to "EPA Hazardous Substance Superfund," and marked as relating to the Site, the civil action number of this matter, and the Department of Justice File No. 90-11-3-215, in reimbursement of Response Costs incurred by the United States:

<u>Settling Defendant</u>	<u>Amount Due</u>
Ford Motor Company	\$321,000
Dow Corning Corporation ✓	\$321,000

The certified check(s) shall be forwarded to EPA-Region IV, Attention: Superfund Accounting, P.O. Box 100142, Atlanta, Georgia, 30384. Copies of the check(s) and any transmittal letter(s) shall be sent to the United States.

VI.

STIPULATED PENALTIES AND INTEREST

2. If any Settling Defendant fails to comply with any requirement applicable to it in this Consent Decree, such Settling Defendant shall pay to EPA stipulated penalties in the

following amounts for each day of each and every violation of said requirements:

<u>Period of Delay</u>	<u>Penalty Per Violation Per Day</u>
1st through 14th day	\$ 3,000
15th through 30th day	\$ 6,000
Beyond 30 days	\$10,000

3. Except as otherwise provided in this Paragraph 3, stipulated penalties shall begin to accrue on the day that noncompliance occurs or on the day following the date that payment is due pursuant to Paragraph 1, and shall continue to accrue through the final day of correction of the noncompliance or the day that payment is received by EPA. With respect to any violation of Paragraph 14, stipulated penalties shall begin to accrue upon notification by the United States or EPA of noncompliance. Separate penalties shall accrue for each separate violation of this Consent Decree.

4.a. All penalties due to EPA under this Section shall be payable within thirty (30) days of receipt by the Settling Defendant of notification of noncompliance. Interest shall begin to accrue on the unpaid penalty balance at the end of the thirty-day period, at the rate specified in Subparagraph 4(c) below. A handling charge shall be assessed at the end of each thirty-day late period, and a six (6) percent per annum penalty charge shall be assessed if the penalty is not paid within ninety (90) days after it is due.

b. With respect to any outstanding payment obligation under Paragraph 1, Section V, except as otherwise specified

therein, interest shall accrue on the outstanding obligation beginning on the day after payment is due at the rate specified in Subparagraph 4(c) below. The interest due under this Subparagraph shall be in addition to any interest or charges assessed under Subparagraph 4(a).

c. All interest payable pursuant to this Consent Decree shall accrue at the rate equal to the yield fixed in the 52-week U.S. Treasury MK Bills purchased by the U.S. Treasury Department for investment of Superfund monies in September for the applicable fiscal year. For fiscal year 1989 (October 1, 1988, to September 20, 1989), the interest rate shall be 8.39%. Interest shall be compounded annually on October 1.

5. Stipulated penalties due to EPA shall be paid by certified check made payable to "EPA Hazardous Substance Superfund" and shall be mailed to EPA-Region IV, Attention: Superfund Accounting, P.O. Box 100142, Atlanta, Georgia, 30384.

6. The stipulated penalties set forth above shall be in addition to any other remedies or sanctions which may be available to the Plaintiff by reason of any Settling Defendant's failure to comply with the requirements of this Consent Decree.

VII.

COVENANTS NOT TO SUE BY PLAINTIFF

7. Past Response Costs. Subject to the reservations of rights in Paragraph 9 of this Section, the Plaintiff covenants not to sue Settling Defendants in any civil or administrative proceeding for reimbursement of Plaintiff's Past Response Costs.

This covenant not to sue shall take effect upon the receipt by Plaintiff of the payments required by Paragraph 1, Section V. This covenant not to sue is conditioned upon complete and satisfactory performance by Settling Defendants of their payment obligations under Paragraph 1, Section V, of this Consent Decree. This covenant not to sue extends only to the Settling Defendants and does not extend to any other person.

8. Monitoring Activities and Operation and Maintenance.

a. Plaintiff has entered into an enforceable agreement with MSD for the performance of monitoring, operation, and maintenance work related to the Site. Plaintiff covenants not to sue Settling Defendants for the performance by MSD pursuant to said agreement and further covenants not to sue Settling Defendants for oversight costs which may be incurred by EPA in overseeing the work required pursuant to said agreement.

b. The covenants not to sue set forth in this Paragraph 8 shall take effect upon the receipt by Plaintiff of the payments required by Paragraph 1, Section V. These covenants not to sue are conditioned upon complete and satisfactory performance by Settling Defendants of their payment obligations under Paragraph 1, Section V, of this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

9. Reservation of rights. The Plaintiff reserves, and this Consent Decree is without prejudice to, all rights against each Settling Defendant with respect to all matters other than

those expressly specified in the covenants not to sue set forth in Paragraphs 7 and 8 of this Section, including but not limited to:

- (1) claims based on a failure by such Settling Defendant to meet a requirement of this Consent Decree;
- (2) claims for reimbursement of Future Response Costs, except as expressly provided in Paragraph 8 of this Section;
- (3) claims for injunctive relief for the performance of response actions except as expressly provided by Paragraph 8 of this Section;
- (4) claims for damages for injury to, destruction of, or loss of natural resources; and
- (5) any criminal liability.

10. Any claim or defense which any Settling Defendant may have against any person or entity, not a party to this Consent Decree, including, but not limited to, claims for indemnity or contribution, is expressly reserved. Except as expressly provided in Paragraph 8(a), nothing in this Consent Decree shall in any way limit the rights and defenses which may be available to any Settling Defendant in any action other than an action to enforce the provisions of this Consent Decree.

11. Notwithstanding any other provision of this Consent Decree, the Plaintiff retains all authority and reserves all rights to take any and all response actions authorized by law.

VIII.

CONTRIBUTION PROTECTION

12. Subject to the reservations of rights in Section VII, Paragraph 9, the Plaintiff agrees that by entering into and carrying out the terms of this Consent Decree, the Settling Defendants will have resolved their liability to the Plaintiff for those matters set forth in the covenants not to sue in Section VII, Paragraphs 7 and 8, pursuant to Section 113(f) of CERCLA, and shall not be liable for claims for contribution for those matters.

IX.

COVENANTS BY SETTLING DEFENDANTS

13. Settling Defendants hereby covenant not to sue the Plaintiff or its representatives for any claims related to or arising from this Consent Decree, including any direct or indirect claim for reimbursement from the Hazardous Substances Superfund established pursuant to Section 221 of CERCLA, 42 U.S.C. § 9631.

X.

COOPERATION AND RETENTION OF RECORDS

14. Settling Defendants agree to cooperate and assist the Plaintiff in the prosecution of this or any other actions relating to the Site against all persons or entities who are not parties to this Consent Decree. Settling Defendants' obligations of cooperation and assistance include, but are not limited to, naming and producing fact witnesses with knowledge relating to

the Site for interviews, depositions, and trial; waiving the subpoena requirements for the depositions and trial testimony of such witnesses; producing documents requested; and promptly responding to requests for information regarding those matters specified in Section 104(e)(2) of CERCLA. The benefit of said agreement by Settling Defendants shall extend only to Plaintiff and not to any other person. Nothing in this Paragraph shall be construed to limit or otherwise affect the exercise of Plaintiff's prosecutorial discretion or any of Plaintiff's authorities under Section 104(e) of CERCLA. Further, nothing in this Paragraph shall be construed to alter the scope of the covenants not to sue and reservations of rights set forth in Paragraphs 7 through 9, Section VII of this Consent Decree.

15. Until ten years after the entry of this Consent Decree, each Settling Defendant shall preserve and retain all records and documents now in its possession or control that relate in any manner to the Site. After this document retention period, Settling Defendants shall notify the United States at least ninety (90) calendar days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Defendants shall relinquish custody of the records or documents to the United States.

16. Nothing in this Section X shall be construed as a waiver of the attorney-client privilege or work product doctrine by any of the Parties to this Consent Decree.

XI.

NOTICES AND SUBMISSIONS

17. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals and the addresses specified below, unless those individuals or their successors give notice of a change to the other parties in writing. Written notice as specified herein shall constitute complete satisfaction of any notice requirement of the Consent Decree with respect to the Parties hereto.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DOJ # 90-11-3-215

and

Director, Waste Management Division
United States Environmental Protection Agency,
Region IV
345 Courtland Street
Atlanta, GA 30365

As to the Settling Defendants:

Ford Motor Company:

John R. Phillips, Esq.
Ford Motor Company
728 Parklane Towers East
One Parklane Boulevard
Dearborn, Michigan 48126-2493

Dow Corning Corporation:

David E. Dearing, Esq.
Cromer, Eaglesfield & Maher, P.A.

1500 Market Tower
10 West Market Street
Indianapolis, IN 46204-2968

XII.

EFFECTIVE AND TERMINATION DATES

18. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

19. This Consent Decree shall terminate upon expiration of the ten-year document retention period specified in Section X. Termination of this Consent Decree shall not affect the covenants not to sue or the reservations of rights set forth in Section VII or the continuing obligations of Settling Defendants set forth in Section X.

XIII.

RETENTION OF JURISDICTION

20. This court will retain jurisdiction for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the modification of this Consent Decree or to effectuate or enforce compliance with its terms.

XIV.

MODIFICATION

21. No modification shall be made to this Consent Decree without written notification to and written approval of the Parties and the Court. The notification required by this Section shall set forth the nature of and reasons for the requested modification. No oral modification of this Consent Decree shall

be effective. Nothing in this paragraph shall be deemed to alter the Court's power to supervise or modify this Consent Decree.

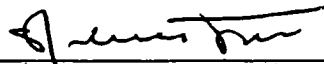
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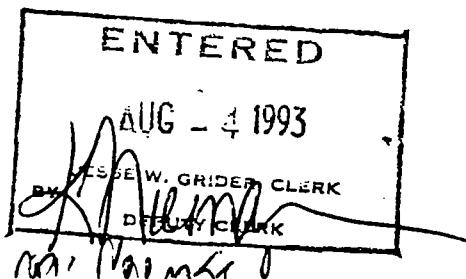
SIGNATORIES

22. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

23. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure, including service of a summons, and any applicable local rules of this Court.

SO ORDERED THIS 4th DAY OF August, 1993.



United States District Judge




THE UNDERSIGNED PARTIES enter into this Consent Decree relating to the Lee's Lane Superfund Site.

FOR THE UNITED STATES OF AMERICA

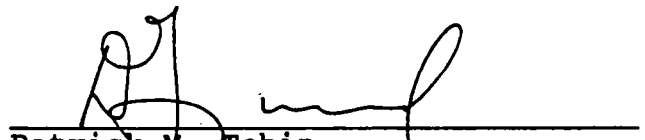
Date: 6-18-97


for Myles E. Flint
Acting Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Date: 6/22/93


James D.P. Farrell
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Date: MAY 20 1993


Patrick M. Tobin
Acting Regional Administrator
U.S. Environmental Protection
Agency, Region IV
345 Courtland Street
Atlanta, Georgia 30365

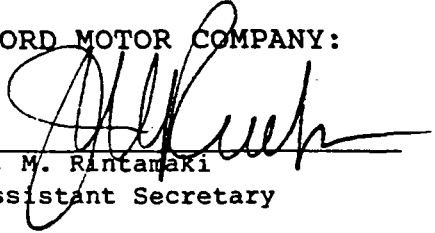
OF COUNSEL:

Robert Caplan, Esq.
U.S. Environmental Protection
Agency, Region IV

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the Lee's Lane Superfund Site.

FOR THE FORD MOTOR COMPANY:

Date: 3/22/93



J. M. Rintamaki
Assistant Secretary

Agent Authorized to accept service on Behalf of Ford Motor Company:

Name:	<u>J. A. Courter</u>
Title:	<u>Secretary</u>
Address:	<u>Ford Motor Company</u>
	<u>The American Road</u>
	<u>Dearborn, MI 48121-1899</u>

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the Lee's Lane Superfund Site.

FOR THE DOW CORNING CORPORATION:

Date: Feb 18, 1993

David E. Dearing

Agent Authorized to accept service on Behalf of Dow Corning Corporation:

Name:	<u>David E. Dearing, Esq.</u>
Title:	<u>Cromer, Eaglesfield & Maher</u>
Address:	<u>1500 Market Tower</u>
	<u>10 West Market Street</u>
	<u>Indianapolis, IN 46204-2968</u>